

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PA ADVISORS, LLC,

Plaintiff,

GOOGLE INC., ET AL.,

Defendants.

CASE NO. 2-07-CV-480-DF

Honorable David Folsom, Presiding

DEFENDANTS' SUR-REPLY BRIEF ON CLAIM CONSTRUCTION

Defendants Google Inc. ("Google") and Yahoo! Inc. ("Yahoo") respectfully submit this sur-reply in response to Plaintiff's August 24, 2009 Reply Brief Regarding Claim Construction.

With respect to the terms "Linguistic Pattern," "User Profile," and "Data Item Profile," Plaintiff's Reply brief does not address the claim constructions that Defendants assert in their Responsive Brief, but instead argues against earlier claim constructions proposed by Defendants. This sur-reply clarifies for the Court the pertinent claim constructions proposed by Defendants.

I. "LINGUISTIC PATTERN"

<i>Defendants' Construction</i>	<i>Plaintiff's Construction</i>
A repeating combination of various parts of speech (nouns, verbs, adjectives, etc.) that reflect the author's cultural, educational, social backgrounds and the author's psychological profile that occurs in texts composed by the author.	A combination of various parts of speech (nouns, verbs, adjectives, etc.).

Defendants' provided their construction for this term on page 9 of their Responsive Claim Construction Brief prominently and clearly in a table on the page. As Defendants further indicated in footnote 5, Defendants' construction in its Response differed from the construction

included in the parties' Joint Claim Construction Statement ("JCCS"). (D.N. 232 at 8.)

Defendants restructured the construction and changed the word "user" to "author" to address an objection raised by Plaintiff's that Defendants' prior construction was inconsistent with the language of the claims regarding the "second linguistic pattern." (Opening Br. at 12.)

Plaintiff's Reply, however, ignores Defendants' actual construction from Defendants' Response. Instead, in its lead argument as to this phrase, Plaintiff incorrectly quotes and argues against Defendants' prior JCCS construction. (Reply Br. at 2.) Plaintiff's lead argument, therefore, is moot.

II. "USER PROFILE" AND "DATA ITEM PROFILE"

<i>Defendants' Construction for User Profile</i>	<i>Plaintiff's Construction</i>
A file containing information representative of a specific user's linguistic patterns and the frequencies with which these patterns recur in texts that are: (i) submitted by the user or (ii) associated with the user and automatically acquired by the system, without identifying any background or private information about the user.	A collection of information about a user.

<i>Defendants' Construction for Data Item Profile</i>	<i>Plaintiff's Construction</i>
A file containing a data item's address, the linguistic patterns of the data item, and the frequencies with which those patterns recur.	A collection of information about a data item.

Defendants also set forth prominently and clearly in a table their constructions for these terms on pages 19 and 23 of their Response. Defendants further indicated in footnotes 9 and 11 that Defendants' constructions for these terms differed slightly from their JCCS constructions. (D.N. 232 at 20, 22.) For instance, for "user profile," Defendants changed the words "about a" to "representative of" specifically to address an objection raised by Plaintiff in its Opening Brief. (Opening Br. at 26.) Plaintiff, however, again ignores Defendants' actual constructions and

incorrectly quotes and argues against Defendants' prior JCCS constructions. (Reply Br. at 6 and 7-8.)

Conclusion

Defendants respectfully request this Court adopt the claim constructions provided by Defendants.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who are deemed to have consented to electronic service on the 2 of September, 2009. Local Rule CV-5(a)(3)(A).

/s/ Brian C. Cannon

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